

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ALEXAM, INC. §
Plaintiff §
§
v. § **No. 2:13cv2**

BEST BUY STORES L.P. §
Defendant §

ALEXAM, INC. §
Plaintiff §
§

v. § **No. 2:13cv3**

**BARNES & NOBLE, INC. AND
BARNES & NOBLE MARKETING
SERVICES, LLC** §
Defendants §

ALEXAM, INC. §
Plaintiff §
§

v. § **No. 2:13cv4**

**THE GAP, INC. AND DIRECT
CONSUMER SERVICES, LLC** §
Defendants §

ALEXAM, INC. §
Plaintiff §
§

v. § **No. 2:13cv5**

**J.C. PENNEY COMPANY, INC. AND
J.C. PENNEY CORPORATION** §
Defendants §

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| ALEXAM, INC. | § | |
| Plaintiff | § | |
| | § | |
| | § | |
| v. | § | No. 2:13cv6 |
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| MCDONALD'S CORPORATION AND | § | |
| P2W, INC. NFP | § | |
| Defendants | § | |

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| ALEXAM, INC. | § | |
| Plaintiff | § | |
| | § | |
| | § | |
| v. | § | No. 2:13cv7 |
| | § | |
| | § | |
| TOYS "R" US – DELWARE, INC. AND | § | |
| TRU-SVC, LLC | § | |
| Defendants | § | |

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| ALEXAM, INC. | § | |
| Plaintiff | § | |
| | § | |
| | § | |
| v. | § | No. 2:13cv8 |
| | § | |
| | § | |
| THE HOME DEPOT, U.S.A., INC. AND | § | |
| HOME DEPOT INCENTIVES, INC. | § | |
| Defendants | § | |

ORDER REGARDING TRIAL

The above-referenced causes of action have been referred to the undersigned for pre-trial purposes in accordance with 28 U.S.C. § 636. Before the Court are the following pending motions: (1) Alexsam's Motion for Order Relating to Trial Scheduling Pursuant to Federal Rule

of Civil Procedure 16 (Docket Entry # 13, Cause No. 2:13cv2)(Docket Entry #9, Cause No. 2:12cv3) (Docket Entry #10, Cause No. 2:12cv4)(Docket Entry #10, Cause No. 2:12cv5)(Docket Entry #10)(Cause No. 2:12cv6)(Docket Entry #10, Cause No. 2:12cv7)(Docket Entry #10, Cause No. 2:12cv8); and (2) Joint Motion to Amend Docket Control Order (Docket Entry #29, Cause No. 2:12cv3)(Docket Entry #30, Cause No. 2:12cv4)(Docket Entry #31, Cause No. 2:12cv5)(Docket Entry #31)(Cause No. 2:12cv6)(Docket Entry #31, Cause No. 2:12cv7)(Docket Entry #31, Cause No. 2:12cv8). In its motion, Alexsam requests a Rule 16 scheduling order for the above-severed cases to proceed to trial as follows. First, the Court would conduct a consolidated trial on the issues of validity and enforceability, the results of which would be binding on all parties. Secondly, the consolidated trial would be followed, if necessary, by separate trials on infringement and damages as to each defendant as the current order contemplates. Defendants oppose Alexsam's request.

The Court, having carefully reviewed the motion, the responses, and the reply, is of the opinion Alexsam's request for a consolidated trial on the issues of validity and enforceability should be granted. In this specific instance, Alexsam's assertions of judicial economy in splitting the issues of invalidity and enforceability into a separate initial trial outweigh any other inefficiencies that might result from bifurcation. The Court hereby continues all existing individual pretrial conference deadlines in the above cases along with all corresponding pretrial deadlines.

The Court hereby grants as modified below the parties' joint motion to amend certain pretrial deadlines. With regard to the consolidated initial trial on invalidity and enforceability, the following deadlines will apply:

- Deadline for parties to exchange pretrial disclosures March 8, 2013
(Exhibits lists, deposition designations, witness lists)
- Deadline to notify court of daily transcript or March 8, 2013
realtime request
- Deadline for parties to exchange motions in limine March 15, 2013
- Exchange objections to pretrial materials March 22, 2013
- Meet and confer re: depo designations, exhibit lists March 27, 2013
- Response to motions in limine March 29, 2013
- Reply re: pretrial materials and motions in limine April 1, 2013
- File PTO and pretrial materials with Court April 5, 2013
- Preliminary pretrial conference in Texarkana April 10, 2013 at 10:00 a.m.
- Final pretrial conference in Texarkana April 23, 2013 at 10:00 a.m.
- Jury selection in Marshall April 29, 2013 at 9:00 a.m.
- Trial in Marshall April 29, 2013, following jury selection

With regard to the *Best Buy* case, the following deadlines will apply, if necessary, following the consolidated trial:

- Final pretrial conference in Texarkana May 15, 2013 at 10:00 a.m.
- Jury selection in Marshall May 20, 2013 at 9:00 a.m.
- Trial in Marshall May 20, 2013, following jury selection

The remaining cases will be set for pretrial conference before the undersigned at a later date, with trials to be scheduled in June and July 2013 in accordance with Judge Schneider's trial

calendar.

The parties are instructed to file a notice with the Court within three days from the date of entry of this Order regarding which motions are applicable to the consolidated invalidity and enforceability trial. Courtesy copies of some of the summary judgment and *Daubert* briefing have already been forwarded to the Court, but to the extent certain others have not been provided, please forward copies of them to the Court as soon as practicable.

IT IS SO ORDERED.

SIGNED this 25th day of February, 2013.



CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE